

FIRST REGULAR SESSION

SENATE BILL NO. 283

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GRIESHEIMER.

Read 1st time January 16, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

1360S.011

AN ACT

To repeal sections 135.950 and 135.967, RSMo, and to enact in lieu thereof two new sections relating to enhanced enterprise zones.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 135.950 and 135.967, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 135.950 and 135.967, to
3 read as follows:

135.950. The following terms, whenever used in sections 135.950 to
2 135.970 mean:

3 (1) "Blighted area", an area which, by reason of the predominance of
4 defective or inadequate street layout, unsanitary or unsafe conditions,
5 deterioration of site improvements, improper subdivision or obsolete platting, or
6 the existence of conditions which endanger life or property by fire and other
7 causes, or any combination of such factors, retards the provision of housing
8 accommodations or constitutes an economic or social liability or a menace to the
9 public health, safety, morals, or welfare in its present condition and use;

10 (2) "Board", an enhanced enterprise zone board established pursuant to
11 section 135.957;

12 (3) "Commencement of commercial operations" shall be deemed to occur
13 during the first taxable year for which the new business facility is first put into
14 use by the taxpayer in the enhanced business enterprise in which the taxpayer
15 intends to use the new business facility;

16 (4) "Department", the department of economic development;

17 (5) "Director", the director of the department of economic development;

18 (6) "Employee", [a person employed by the enhanced business enterprise

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 on:

20 (a) A regular, full-time basis;

21 (b) A part-time basis, provided such person is customarily performing
22 such duties an average of at least twenty hours per week; or

23 (c) A seasonal basis, provided such person performs such duties for at
24 least eighty percent of the season customary for the position in which such person
25 is employed] **a person that is scheduled to work an average of at least**
26 **twenty hours per week for the first six months after the position is**
27 **created, and thirty-five hours a week thereafter, and such person at all**
28 **times has health insurance offered to him or her, which is at least**
29 **partially paid for by the employer;**

30 (7) "Enhanced business enterprise", an industry or one of a cluster of
31 industries that is either:

32 (a) Identified by the department as critical to the state's economic security
33 and growth; or

34 (b) Will have an impact on industry cluster development, as identified by
35 the governing authority in its application for designation of an enhanced
36 enterprise zone and approved by the department; but excluding gambling
37 establishments (NAICS industry group 7132), retail trade (NAICS sectors 44 and
38 45) and food and drinking places (NAICS subsector 722). Service industries may
39 be eligible only if a majority of its annual revenues will be derived from services
40 provided out of the state;

41 (8) "Existing business facility", any facility in this state which was
42 employed by the taxpayer claiming the credit in the operation of an enhanced
43 business enterprise immediately prior to an expansion, acquisition, addition, or
44 replacement;

45 (9) "Facility", any building used as an enhanced business enterprise
46 located within an enhanced enterprise zone, including the land on which the
47 facility is located and all machinery, equipment, and other real and depreciable
48 tangible personal property acquired for use at and located at or within such
49 facility and used in connection with the operation of such facility;

50 (10) **"Facility base employment", the greater of the number of**
51 **full-time employees located at the facility on the date of the notice of**
52 **intent, or for the twelve-month period prior to the date of the notice of**
53 **intent, the average number of employees located at the facility or in the**
54 **event the project facility has not been in operation for a full**

55 **twelve-month period, the average number of employees for the number**
56 **of months the facility has been in operation prior to the date of the**
57 **notice of intent;**

58 **(11) "Facility base payroll", the total amount of taxable wages**
59 **paid by the enhanced business enterprise to employees of the enhanced**
60 **business enterprise located at the facility in the twelve months prior**
61 **to the notice of intent, not including the payroll of owners of the**
62 **enhanced business enterprise unless the enhanced business enterprise**
63 **is participating in an employee stock ownership plan. For the purposes**
64 **of calculating the benefits under sections 135.950 to 135.970, the amount**
65 **of base payroll shall increase each year based on the Consumer Price**
66 **Index, or other comparable measure, as determined by the department;**

67 **(12) "Governing authority", the body holding primary legislative authority**
68 **over a county or incorporated municipality;**

69 **[(11)] (13) "NAICS", the 1997 edition of the North American Industry**
70 **Classification System as prepared by the Executive Office of the President, Office**
71 **of Management and Budget. Any NAICS sector, subsector, industry group or**
72 **industry identified in this section shall include its corresponding classification in**
73 **subsequent federal industry classification systems;**

74 **[(12)] (14) "New business facility", a facility that satisfies the following**
75 **requirements:**

76 **(a) Such facility is employed by the taxpayer in the operation of an**
77 **enhanced business enterprise. Such facility shall not be considered a new**
78 **business facility in the hands of the taxpayer if the taxpayer's only activity with**
79 **respect to such facility is to lease it to another person or persons. If the taxpayer**
80 **employs only a portion of such facility in the operation of an enhanced business**
81 **enterprise, and leases another portion of such facility to another person or**
82 **persons or does not otherwise use such other portions in the operation of an**
83 **enhanced business enterprise, the portion employed by the taxpayer in the**
84 **operation of an enhanced business enterprise shall be considered a new business**
85 **facility, if the requirements of paragraphs (b), (c), and (d) of this subdivision are**
86 **satisfied;**

87 **(b) Such facility is acquired by, or leased to, the taxpayer after December**
88 **31, 2004. A facility shall be deemed to have been acquired by, or leased to, the**
89 **taxpayer after December 31, 2004, if the transfer of title to the taxpayer, the**
90 **transfer of possession pursuant to a binding contract to transfer title to the**

91 taxpayer, or the commencement of the term of the lease to the taxpayer occurs
92 after December 31, 2004;

93 (c) If such facility was acquired by the taxpayer from another taxpayer
94 and such facility was employed immediately prior to the acquisition by another
95 taxpayer in the operation of an enhanced business enterprise, the operation of the
96 same or a substantially similar enhanced business enterprise is not continued by
97 the taxpayer at such facility; and

98 (d) Such facility is not a replacement business facility, as defined in
99 subdivision [(16)] **(22)** of this section;

100 [(13)] **(15)** "New business facility employee", an employee of the taxpayer
101 in the operation of a new business facility during the taxable year for which the
102 credit allowed by section 135.967 is claimed, except that truck drivers and rail
103 and barge vehicle operators and other operators of rolling stock for hire shall not
104 constitute new business facility employees;

105 [(14)] **(16)** "New business facility investment", the value of real and
106 depreciable tangible personal property, acquired by the taxpayer as part of the
107 new business facility, which is used by the taxpayer in the operation of the new
108 business facility, during the taxable year for which the credit allowed by 135.967
109 is claimed, except that trucks, truck-trailers, truck semitrailers, rail vehicles,
110 barge vehicles, aircraft and other rolling stock for hire, track, switches, barges,
111 bridges, tunnels, and rail yards and spurs shall not constitute new business
112 facility investments. The total value of such property during such taxable year
113 shall be:

114 (a) Its original cost if owned by the taxpayer; or

115 (b) Eight times the net annual rental rate, if leased by the taxpayer. The
116 net annual rental rate shall be the annual rental rate paid by the taxpayer less
117 any annual rental rate received by the taxpayer from subrentals. The new
118 business facility investment shall be determined by dividing by twelve the sum
119 of the total value of such property on the last business day of each calendar
120 month of the taxable year. If the new business facility is in operation for less
121 than an entire taxable year, the new business facility investment shall be
122 determined by dividing the sum of the total value of such property on the last
123 business day of each full calendar month during the portion of such taxable year
124 during which the new business facility was in operation by the number of full
125 calendar months during such period;

126 [(15)] **(17)** "New job", the number of employees located at the

127 facility that exceeds the facility base employment less any decrease in
128 the number of employees at related facilities below the related facility
129 base employment. No job that was created prior to the date of the
130 notice of intent shall be deemed a new job;

131 (18) "Notice of intent", a form developed by the department,
132 completed by the enhanced business enterprise, and submitted to the
133 department which states the enhanced business enterprise's intent to
134 hire new jobs and request benefits under sections 135.950 to 135.970;

135 (19) "Related facility", a facility operated by the enhanced
136 business enterprise or a related company located in this state that is
137 directly related to the operations of the project facility;

138 (20) "Related facility base employment", the greater of:

139 (a) The number of employees located at all related facilities on
140 the date of the notice of intent; or

141 (b) For the twelve-month period prior to the date of the notice
142 of intent, the average number of employees located at all related
143 facilities of the enhanced business enterprise or a related company
144 located in this state;

145 (21) "Related taxpayer":

146 (a) A corporation, partnership, trust, or association controlled by the
147 taxpayer;

148 (b) An individual, corporation, partnership, trust, or association in control
149 of the taxpayer; or

150 (c) A corporation, partnership, trust or association controlled by an
151 individual, corporation, partnership, trust or association in control of the
152 taxpayer. "Control of a corporation" shall mean ownership, directly or indirectly,
153 of stock possessing at least fifty percent of the total combined voting power of all
154 classes of stock entitled to vote, "control of a partnership or association" shall
155 mean ownership of at least fifty percent of the capital or profits interest in such
156 partnership or association, and "control of a trust" shall mean ownership, directly
157 or indirectly, of at least fifty percent of the beneficial interest in the principal or
158 income of such trust; ownership shall be determined as provided in Section 318
159 of the Internal Revenue Code of 1986, as amended;

160 [(16)] (22) "Replacement business facility", a facility otherwise described
161 in subdivision [(12)] (14) of this section, hereafter referred to in this subdivision
162 as "new facility", which replaces another facility, hereafter referred to in this

163 subdivision as "old facility", located within the state, which the taxpayer or a
164 related taxpayer previously operated but discontinued operating on or before the
165 close of the first taxable year for which the credit allowed by this section is
166 claimed. A new facility shall be deemed to replace an old facility if the following
167 conditions are met:

168 (a) The old facility was operated by the taxpayer or a related taxpayer
169 during the taxpayer's or related taxpayer's taxable period immediately preceding
170 the taxable year in which commencement of commercial operations occurs at the
171 new facility; and

172 (b) The old facility was employed by the taxpayer or a related taxpayer
173 in the operation of an enhanced business enterprise and the taxpayer continues
174 the operation of the same or substantially similar enhanced business enterprise
175 at the new facility.

176 Notwithstanding the preceding provisions of this subdivision, a facility shall not
177 be considered a replacement business facility if the taxpayer's new business
178 facility investment, as computed in subdivision [(14)] (16) of this section, in the
179 new facility during the tax period for which the credits allowed in section 135.967
180 are claimed exceed one million dollars and if the total number of employees at the
181 new facility exceeds the total number of employees at the old facility by at least
182 two;

183 [(17)] (23) "Same or substantially similar enhanced business enterprise",
184 an enhanced business enterprise in which the nature of the products produced or
185 sold, or activities conducted, are similar in character and use or are produced,
186 sold, performed, or conducted in the same or similar manner as in another
187 enhanced business enterprise.

135.967. 1. A taxpayer who establishes a new business facility may, upon
2 approval by the department, be allowed a credit, each tax year for up to ten tax
3 years, in an amount determined as set forth in this section, against the tax
4 imposed by chapter 143, RSMo, excluding withholding tax imposed by sections
5 143.191 to 143.265, RSMo. No taxpayer shall receive multiple ten-year periods
6 for subsequent expansions at the same facility.

7 2. Notwithstanding any provision of law to the contrary, any taxpayer who
8 establishes a new business facility in an enhanced enterprise zone and is awarded
9 state tax credits under this section may not also receive tax credits under sections
10 135.100 to 135.150, sections 135.200 to 135.268, or section 135.535.

11 3. No credit shall be issued pursuant to this section unless:

12 (1) The number of new business facility employees engaged or maintained
13 in employment at the new business facility for the taxable year for which the
14 credit is claimed equals or exceeds two; and

15 (2) The new business facility investment for the taxable year for which the
16 credit is claimed equals or exceeds one hundred thousand dollars.

17 4. The annual amount of credits allowed for an approved enhanced
18 business enterprise shall be the lesser of:

19 (1) The annual amount authorized by the department for the enhanced
20 business enterprise, which shall be limited to the projected state economic
21 benefit, as determined by the department; or

22 (2) The sum calculated based upon the following:

23 (a) A credit of four hundred dollars for each new business facility
24 employee employed within an enhanced enterprise zone;

25 (b) An additional credit of four hundred dollars for each new business
26 facility employee who is a resident of an enhanced enterprise zone;

27 (c) An additional credit of four hundred dollars for each new business
28 facility employee who is paid by the enhanced business enterprise a wage that
29 exceeds the average wage paid within the county in which the facility is located,
30 as determined by the department; and

31 (d) A credit equal to two percent of new business facility investment
32 within an enhanced enterprise zone.

33 5. Prior to January 1, 2007, in no event shall the department authorize
34 more than four million dollars annually to be issued for all enhanced business
35 enterprises. After December 31, 2006, in no event shall the department authorize
36 more than [seven] **twenty-five** million dollars annually to be issued for all
37 enhanced business enterprises.

38 6. If a facility, which does not constitute a new business facility, is
39 expanded by the taxpayer, the expansion shall be considered eligible for the credit
40 allowed by this section if:

41 (1) The taxpayer's new business facility investment in the expansion
42 during the tax period in which the credits allowed in this section are claimed
43 exceeds one hundred thousand dollars and if the number of new business facility
44 employees engaged or maintained in employment at the expansion facility for the
45 taxable year for which credit is claimed equals or exceeds two, and the total
46 number of employees at the facility after the expansion is at least two greater
47 than the total number of employees before the expansion; and

48 (2) The taxpayer's investment in the expansion and in the original facility
49 prior to expansion shall be determined in the manner provided in subdivision
50 [(12)] (14) of section 135.950.

51 7. The number of new business facility employees during any taxable year
52 shall be determined by dividing by twelve the sum of the number of individuals
53 employed on the last business day of each month of such taxable year. If the new
54 business facility is in operation for less than the entire taxable year, the number
55 of new business facility employees shall be determined by dividing the sum of the
56 number of individuals employed on the last business day of each full calendar
57 month during the portion of such taxable year during which the new business
58 facility was in operation by the number of full calendar months during such
59 period. For the purpose of computing the credit allowed by this section in the
60 case of a facility which qualifies as a new business facility under subsection 6 of
61 this section, and in the case of a new business facility which satisfies the
62 requirements of paragraph (c) of subdivision [(12)] (14) of section 135.950, or
63 subdivision [(16)] (22) of section 135.950, the number of new business facility
64 employees at such facility shall be reduced by the average number of individuals
65 employed, computed as provided in this subsection, at the facility during the
66 taxable year immediately preceding the taxable year in which such expansion,
67 acquisition, or replacement occurred and shall further be reduced by the number
68 of individuals employed by the taxpayer or related taxpayer that was
69 subsequently transferred to the new business facility from another Missouri
70 facility and for which credits authorized in this section are not being earned,
71 whether such credits are earned because of an expansion, acquisition, relocation,
72 or the establishment of a new facility.

73 8. In the case where a new business facility employee who is a resident
74 of an enhanced enterprise zone for less than a twelve-month period is employed
75 for less than a twelve-month period, the credits allowed by paragraph (b) of
76 subdivision (2) of subsection 4 of this section shall be determined by multiplying
77 four hundred dollars by a fraction, the numerator of which is the number of
78 calendar days during the taxpayer's tax year for which such credits are claimed,
79 in which the employee was a resident of an enhanced enterprise zone, and the
80 denominator of which is three hundred sixty-five.

81 9. For the purpose of computing the credit allowed by this section in the
82 case of a facility which qualifies as a new business facility pursuant to subsection
83 6 of this section, and in the case of a new business facility which satisfies the

84 requirements of paragraph (c) of subdivision [(12)] (14) of section 135.950 or
85 subdivision [(16)] (22) of section 135.950, the amount of the taxpayer's new
86 business facility investment in such facility shall be reduced by the average
87 amount, computed as provided in subdivision [(12)] (14) of section 135.950 for
88 new business facility investment, of the investment of the taxpayer, or related
89 taxpayer immediately preceding such expansion or replacement or at the time of
90 acquisition. Furthermore, the amount of the taxpayer's new business facility
91 investment shall also be reduced by the amount of investment employed by the
92 taxpayer or related taxpayer which was subsequently transferred to the new
93 business facility from another Missouri facility and for which credits authorized
94 in this section are not being earned, whether such credits are earned because of
95 an expansion, acquisition, relocation, or the establishment of a new facility.

96 10. For a taxpayer with flow-through tax treatment to its members,
97 partners, or shareholders, the credit shall be allowed to members, partners, or
98 shareholders in proportion to their share of ownership on the last day of the
99 taxpayer's tax period.

100 11. Credits may not be carried forward but shall be claimed for the
101 taxable year during which commencement of commercial operations occurs at
102 such new business facility, and for each of the nine succeeding taxable years for
103 which the credit is issued.

104 12. Certificates of tax credit authorized by this section may be
105 transferred, sold, or assigned by filing a notarized endorsement thereof with the
106 department that names the transferee, the amount of tax credit transferred, and
107 the value received for the credit, as well as any other information reasonably
108 requested by the department. The sale price cannot be less than seventy-five
109 percent of the par value of such credits.

110 13. The director of revenue shall issue a refund to the taxpayer to the
111 extent that the amount of credits allowed in this section exceeds the amount of
112 the taxpayer's income tax.

113 14. **Prior to the issuance of any tax credits, the department shall**
114 **verify through the department of revenue that the tax credit applicant**
115 **does not owe any delinquent income, insurance, sales, or use taxes, or**
116 **interest or penalties on such taxes, and through the department of**
117 **insurance that the applicant does not owe any delinquent insurance**
118 **taxes. Such delinquency shall not affect the authorization of the**
119 **application for such tax credits, except that the amount of credits**

120 issued shall be reduced by the amount of the applicant's tax
121 delinquency. If the department of revenue or the department of
122 insurance concludes that a taxpayer is delinquent after June fifteenth
123 but before July first of any year, and the application of tax credits to
124 such delinquency causes a tax deficiency on behalf of the taxpayer to
125 arise, then the taxpayer shall be granted thirty days to satisfy the
126 deficiency in which interest, penalties, and additions to tax shall be
127 tolled. After applying all available credits towards a tax delinquency,
128 the administering agency shall notify the appropriate department, and
129 that department shall update the amount of outstanding delinquent tax
130 owed by the applicant. If any credits remain after satisfying all
131 income, insurance, sales, and use tax delinquencies, the remaining
132 credits shall be issued to the applicant, subject to the restrictions of
133 other provisions of the law.

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Bill

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